

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**ROBERT SEMANS, ex rel
UNITED STATES OF AMERICA,**

Plaintiffs,

**5:00-CV-540
(NAM/GJD)**

v.

LB & B ASSOCIATES INC.,

Defendant.

APPEARANCES

OF COUNSEL:

Seidenberg and Strunk
Attorneys for Plaintiff Semans
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Syracuse, New York 13202

Faith A. Seidenberg, Esq.

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Benjamin N. Thompson, Esq.
Jennifer M. Miller, Esq.

Bond, Schoeneck & King, LLP
Attorney for Defendant
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Syracuse, New York 13202-1355

Peter A. Jones, Esq.

HON. NORMAN A. MORDUE, D.J.:

ORDER

In the February 22, 2005, the court granted the defendant's motion to dismiss the amended complaint pursuant to Rule 9(b), and ordered the plaintiff to submit a second amended complaint, if any, within sixty (60) calendar days of the date of the February 28, 2005 Order.

The deadline to file the second amended complaint was April 29, 2005, and according to

the docket the second amended complaint was not filed. Therefore, on June 22, 2005, the Court again ordered the plaintiff to file the second amended complaint on or before July 22, 2005, or the instant action would be dismissed without further order of this Court due to plaintiff's failure to comply.

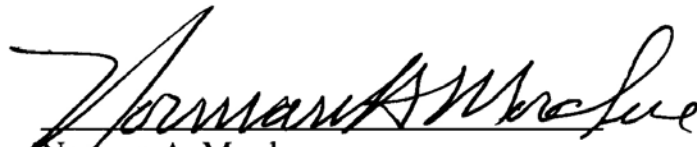
On July 18, 2005, plaintiff's counsel filed a letter with the Court stating "In view of the fact that Mr. Semans cannot produce the documents that you requested we are forced to end the case".

WHEREFORE, it is hereby

ORDERED, that this instant action is dismissed due to plaintiff's failure to comply.

IT IS FURTHER ORDERED, that the Clerk enter judgment against plaintiff for failure to plead fraud with particularity pursuant to Rule 9(b).

Dated: August 3, 2005
Syracuse, New York


Norman A. Mordue
U.S. District Judge